

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 930 of 2009**

1. Sarwan (Shrawan) S/o Bhiaya Ram Pandey, Caste Kumhar, aged about 45 years, R/o Matarbahara, Talabpara, Police Station Bagbahra, District Mahasamund, CG

--- Appellant**Versus**

1. State of Chhattisgarh through SHO, PS Bagbahara, District Mahasamund, CG

--- Respondent

For Appellant:

Shri Manoj Jaiswal, Advocate

For Respondent/State:

Shri Ravindra Agrawal, PL

Hon'ble Shri Justice Pritinker Diwaker**Judgment On Board****11.02.2016**

This appeal has been filed against the judgment of conviction and order of sentence dated 09.11.2009 passed by Sessions Judge Mahasamund, in Sessions Trial No. 54/2009 convicting the accused/appellant under Section 307 IPC and sentencing him to undergo rigorous imprisonment for eight years with fine of Rs. 5000/-, plus default stipulation.

2. Victim Malti Pandey is the wife of younger brother of the accused/appellant. Further case of the prosecution is that after partition in the family on 25.6.2009 when the complainant was shifting the house-hold goods from her old house to the new one, the accused/appellant who happens to be her brother-in-law came

to her, started abusing and inflicted axe injuries on her neck, left ear and head on account of which she fell unconscious and was taken to hospital by her husband, and by that time the accused/appellant ran away from the spot. FIR Ex. P-1 was registered against the accused/appellant for the offence punishable under Section 307 IPC. Victim was medically examined by Dr. Vijay Pratap Singh (PW-4) who gave his report Ex. P-5. After completion of investigation, charge-sheet was filed under Section 307 IPC followed by framing of charge accordingly.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 05 witnesses. Statement of the accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case. Defence also examined one witness namely Chitranjan Yadav (DW-1) in support of its case.

4. After hearing the parties the Court below has convicted and sentenced the appellant as mentioned above.

5. Counsel for the accused/appellant submits as under:

- (i) that even if the entire case of the prosecution is taken as it is, the offence under Section 307 IPC is not made out against the accused/appellant as one of the basic ingredients such as the intention to commit murder of the victim, is totally missing in this case; and
- (ii) that the victim remained hospitalized only for two days and did not sustain any fracture;

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below are just and proper and do not call for any interference in this appeal. He also submits that after serving out the total sentence and getting remission, the appellant has already been set free on 10.8.2013.

7. Heard counsel for the parties and perused the material available on record.

8. Victim Malti Bai (PW-1) has stated in her evidence that on the date of incident when she was shifting the house-hold goods to the newly constructed house in the outskirts of the village, the accused/appellant who happens to be her brother-in-law in relation came there, objected to shifting of luggage and also caused injuries on her neck, head, nose and waist with axe as a result of which she became unconscious and was taken to hospital. Thereafter, FIR Ex. P-1 was registered. According to her, as her children were young, she used to visit the hospital for treatment and during the period of treatment, she stayed at her mother's house. Cross examination of this witness also contains the same thing as examination-in-chief. Tularam (PW-2) is the witness who had accompanied the husband of the victim to the hospital for her treatment. Awadh Ram (PW-3) – the husband of the victim has stated that on the date of incident when he returned home from the Society, his children told him that the accused/appellant had assaulted the victim. On this, he went to his old house and saw the victim lying unconscious near the borewell. Thereafter, he hired a vehicle and took the victim to hospital for treatment. Cross-examination too is the reiteration of the statement made in examination-in-chief. Dr. Vijay Pratap Singh (PW-4) is the witness who medically examined the victim and gave his

report Ex. P-5 stating that he found deep incised wound on the neck of the victim in the size of 3 x 2 x 2 cm bleeding profusely as the main artery was cut. He also noticed deep incised wound over the left side of her head in the size of 2 x 2 x 1 cm with profuse bleeding. According to him, lacerated wound near the left eye and above the neck of the victim was also noticed. These injuries, according to this witness, could have been caused with the weapon produced before him and the same were grievous in nature and dangerous to life. In the query report Ex. P-7 he has stated that the injuries could result in death if the prompt medical treatment was not made available to the victim. Kumar Singh Usendi (PW-5) is the investigating officer who has duly supported the case of the prosecution. Chitranjan Yadav (DW-1) has stated that when the victim tried to intervene in the scuffle between her husband and the accused/appellant, she suffered the injuries.

9. Minute examination of material on record makes it clear that on the date of incident when the victim (PW-1) was shifting the household items to the newly constructed house, the accused/appellant came there and raising objection to the said shifting, started abusing her and inflicted number of injuries on her neck, left ear, head, nose etc. with the help of axe. Even the doctor (PW-4) who medically treated the victim has stated in his report Ex. P-5 that the injuries sustained by her were grievous in nature and dangerous to life. By way of query report Ex. P-7 this witness has further stated that the injuries sustained by the victim could have been caused with the weapon produced before him and they might have resulted in death if medical treatment was not provided to her promptly. Thus the evidence of the victim which is fully

corroborated by the medical evidence and also the evidence of her husband who had taken her to hospital after being informed of the incident by his children, is fully trustworthy and there is no reason for this Court to disbelieve the same. Conviction under Section 307 IPC is thus strictly based on the evidence of the witnesses and being so it requires no interference in this appeal.

10. Appeal being devoid of any merit is liable to be dismissed and it is dismissed as such.

Sd/-

(Pritinker Diwaker)
Judge